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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2179/2012

Views adopted by the Committee at its 112th session (7-31 October 2014)

Submitted by:	Young-kwan Kim et al. (represented by counsel, Du-Jin Oh)
Alleged victims:	Young-kwan Kim et al.
State party:	Republic of Korea
Date of communication:	14 March 2012
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 25 July 2012 (not issued in document form)
Date of adoption of views:	15 October 2014
Subject matter:	Conscientious objection to compulsory military service and ensuing detention
Procedural issues:	Substantiation of claims
Substantive issues:	Freedom of conscience; arbitrary detention
Articles of the Covenant:	9, paragraph 1; 18, paragraph 1
Article of the Optional Protocol:	2

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2179/2012*

Submitted by:	Young-kwan Kim et al. (represented by counsel, Du-Jin Oh)
Alleged victims:	Young-kwan Kim et al.
State party:	Republic of Korea
Date of communication:	14 March 2012

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 15 October 2014,

Having concluded its consideration of communication No. 2179/2012, submitted to the Human Rights Committee by Young-kwan Kim et al., under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are 50 individuals, all nationals of the Republic of Korea. They claim to be victims of violations by the Republic of Korea of their rights under articles 9 and 18 of the International Covenant on Civil and Political Rights.[1] The authors are represented by counsel, Du-jin Oh.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Christine Chanet, Cornelis Flinterman, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Varzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The texts of a joint opinion by Committee members Yuji Iwasawa, Gerald L. Neuman, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili (concurring) and of an individual opinion of Committee member Fabián Omar Salvioli (concurring) are appended to the present views.

[1] The Optional Protocol entered into force for the Republic of Korea on 10 April 1990.

The facts as presented by the authors

2.1 All 50 authors are Jehovah's Witnesses, who have been sentenced to 18 months imprisonment for refusing, on the basis of their religious belief, to be drafted for military service.[2]

Young-kwan Kim

2.2 On 21 May 2001, the author became a Jehovah's Witness. He received an enlistment notice from the Military Manpower Administration Office in spring 2006 and replied with a written statement about his religious belief and refusal to take up arms on the basis of his conscience. On 20 April 2007, the author was sentenced to 18 months in prison by the Trial Court of Gwangju because he was a conscientious objector to military service. On 12 July 2007, his appeal to the Court of Appeal was dismissed and his appeal to the Supreme Court was dismissed on 11 October 2007. He was released on parole on 30 September 2008.

Won-dae Kim

2.3 The author became a Jehovah's Witness by baptism at the age of 18 on 21 August 2004. He received an enlistment notice on 1 November 2007 and notified the Military Manpower Administration Office of his decision to conscientiously object to military service. The author was sentenced to 18 months in prison by the Trial Court of Jeju on 7 May 2009 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 22 October 2009, and his appeal to the Supreme Court was dismissed on 24 December 2009. He was imprisoned on 22 October 2009 and he was released on parole on 24 December 2010.

Jung-ho Kim

2.4 The author has studied the Bible from a young age and became a Jehovah's Witness by baptism on 8 May 2004. On 19 June 2008, the author notified the Manpower Administration Office of his conscientious objection and that he would perform the alternative to military service. On 4 December 2008, the Uijeongbu District Court sentenced him to 18 months of imprisonment. His appeal was dismissed. On 12 February 2009, he was imprisoned. While in prison, he appealed to the Supreme Court, which dismissed his appeal on 23 April 2009. He was released on parole on 30 April 2010.

Jong-bok Kim

2.5 The author has studied the Bible since childhood and was baptized as a Jehovah's Witness on 16 August 2003. The author did not respond to a draft notice of 12 August 2007. On 25 March 2009, the Trial Court of Changwon sentenced the author to 18 months of imprisonment. His appeal to the Changwon District Court was dismissed on 20 August 2009. His appeal to the Supreme Court was dismissed on 12 November 2009. He was imprisoned on 18 November 2009 and was released on parole on 28 January 2011.

Jong-uk Kim

2.6 The author was baptized on 30 July 2000. When he received a call from Military Manpower Administration Office in the second quarter of 2007 asking whether he would serve in the military, he explained his conscientious objection. The author was sentenced to 18 months in prison by the Trial Court of Suncheon branch of Gwangju on 19 July 2007

[2] The court decisions provided with the complaint indicate that military draft evasion is a crime under article 88, paragraph 1, of the Korean Military Service Act.

because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 12 September 2007, and his appeal to the Supreme Court was dismissed on 29 November 2007. He served his sentence from 1 June 2007 to 30 September 2008.

Ji-Hun Kim

2.7 The author became a Jehovah's Witness by baptism on 2 August 2003. After receiving a draft notice on 27 November 2007, he informed the Military Manpower Administration of his decision not to enlist based on his conscience on 26 November 2007. The author was arrested during the first hearing on 9 April 2008. The author was sentenced to 18 months in prison by the Trial Court of Busan on 26 May 2008. His appeal to the Court of Appeal was dismissed on 24 July 2008, and his appeal to the Supreme Court was dismissed on 9 October 2008. He was released on parole on 30 November 2009.

Chan-woo Kim

2.8 On 2 August 2003, the author was baptized. He submitted notification of conscientious objection to the Military Manpower Administration Office on 11 September 2007. The author was sentenced to 18 months in prison by the Trial Court of Busan on 29 January 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 22 May 2008, and his appeal to the Supreme Court was dismissed on 24 July 2008. He was imprisoned in Busan Jurye Detention Centre on 14 August 2008. On 28 October 2009, he was released on parole.

Hyeon-woo Kim

2.9 On 22 December 2007, the author decided to be baptized as a Jehovah's Witness. On 1 October 2009, he received a draft notice that ordered him to enter a military camp on 9 November 2009, which he did not enter. He was sentenced to 18 months in prison by the Trial Court of Ansan Branch of Suwon, on 28 January 2010 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 29 April 2010, and his appeal to the Supreme Court was dismissed on 9 September 2010. On 27 September 2010 he was imprisoned and was released on parole on 30 November 2011.

Hyeong-cheol Kim

2.10 The author became a Jehovah's Witness by baptism on 3 December 2000. He received a notice of draft for military service on 20 June 2007, but he did not present himself to the camp. The author was sentenced to 18 months in prison by the Trial Court of Gwangju on 2 November 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 2 April 2008, and his appeal to the Supreme Court was dismissed on 12 June 2008. He was released on parole on 31 January 2009.

Jeong-min Na

2.11 The author was baptized in Paraguay on 27 November 2005. In January 2005, after a long period living overseas, he came back from Canada to the Republic of Korea and settled there. On 15 December 2006, he received a draft notice ordering him to report to the Nonsan Army Recruit Training Centre, which he did not do. On 20 June 2007, the Seoul Central District Court sentenced him to 18 months imprisonment. The Court of Appeal dismissed his appeal on 10 October 2007, and his appeal to the Supreme Court was dismissed on 15 May 2008. He was imprisoned on 1 July 2008 and was released on parole on 30 September 2009.

Sung-bong Nam

2.12 The author was baptized on 8 December 2001. He received a draft notice of active military service on 23 October 2006, but did not enter the camp; charges were pressed against him by the Military Manpower Administration Office. The author was sentenced to 18 months in prison by the Trial Court of Busan on 14 August 2007 because he was a conscientious objector to military service. The Court of Appeal dismissed his appeal on 17 April 2008 and his appeal to the Supreme Court was dismissed on 12 June 2008. He was imprisoned at the Busan Detention Centre on 23 June 2008 and was discharged on 30 September 2009.

Woo-sung Nam

2.13 The author became a Jehovah's Witness by baptism on 1 November 1997. The author was part of the technical research staff of the Graduate School of Yonsei and was fulfilling his duty for the alternative military service. However, he received a notice to report to Chungnam Nonsan Army Training Centre on 17 May 2007 and to participate in the training programme for skilled industry personnel until 14 June 2007, which included military training. Due to his religious beliefs, he did not enter the military camp. The author was sentenced to 18 months in prison by the Seoul Western District Court on 20 December 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 26 June 2008, and his appeal to the Supreme Court was dismissed on 11 September 2008. He was imprisoned on 22 September 2008, and was released on parole on 30 November 2009.

Ah-min Roh

2.14 The author was baptized in 1998. Because he did not enter the military camp on the date indicated in a draft notice of 4 May 2007, the author was sentenced to 18 months in prison by the Trial Court of Suwon on 10 October 2007 as a conscientious objector to military service. The Court of Appeal dismissed his appeal on 24 January 2008, and his appeal to the Supreme Court was also dismissed on 11 April 2008. On 24 January 2008, he was imprisoned, and was released on parole on 30 March 2009.

Nak-hong Min

2.15 The author became a Jehovah's Witness by baptism on 8 October 2005. He received a draft notice on 19 April 2007. The author was sentenced to 18 months in prison by the Trial Court of Cheongju on 8 July 2009 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 30 December 2009, and his appeal to the Supreme Court was dismissed on 13 October 2011. He was imprisoned on 17 October 2011.

Myung-gyun Park

2.16 The author became a Jehovah's Witness by baptism on 27 July 2001. On 15 June 2007, the author informed the Kwangju Military Manpower Administration Office of his conscientious objection to military service. The author was sentenced to 1 year and 6 months in prison by the Trial Court of Kwangju on 30 November 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 2 April 2008, and his appeal to the Supreme Court was dismissed on 12 June 2008. He was imprisoned on 30 November 2007 and was released on parole on 28 February 2009.

Seong-min Park

2.17 The author's parents are Jehovah's Witnesses and he became a Jehovah's Witness on 26 July 1997. He received a notice of draft for active military service on 6 July 2007. The author was sentenced to 18 months in prison by the Trial Court of Jeongju on 19 February 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 11 April 2008, and his appeal to the Supreme Court was dismissed on 26 June 2008. He was imprisoned on 19 February 2008 and was released on parole on 2 May 2009.

In-pum Park

2.18 The author was baptized as a Jehovah's Witness on 18 November 2000. In March of 2007, he received a notice ordering him to enlist in the army. The author was sentenced to 18 months in prison by the Trial Court of Suwon on 14 September 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 15 November 2007, and his appeal to the Supreme Court was dismissed on 10 April 2008. He was released on parole on 28 October 2008.

Jin-kyu Seo

2.19 On 19 September 2007, the author received an enlistment notice. He called the Office of Military Manpower Administration and revealed that he was a Jehovah's Witness and that he could not fulfil his military duty. The author was sentenced to 18 months in prison by the Trial Court of Goyang Branch of Euijeongbu on 14 February 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 23 May 2008, and his appeal to the Supreme Court was dismissed on 21 August 2008. He was released on parole on 28 July 2009.

Woo-sik Son

2.20 The author became a Jehovah's Witness by baptism on 30 July 2005. He received a notice of draft for military service. The author was sentenced to 18 months in prison by the Trial Court of Cheonan Branch of Daejeon on 12 November 2009 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 11 February 2010, and his appeal to the Supreme Court was dismissed on 8 July 2010. He was released on parole on 30 September 2011.

Chul-woo Song

2.21 The author became a Jehovah's Witness by baptism on 3 August 2005. He has objected to military service on the basis of conscience since 2007. He received a draft notice on 3 May 2007. The author was sentenced to 18 months in prison by the Trial Court of Western Seoul on 5 October 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 29 November 2007, and his appeal to the Supreme Court was dismissed on 27 October 2011.

Tae-yang Oh

2.22 The author started to study the Bible when he was 7 years old. When he was 15, he volunteered to be baptized. On 1 September 2009, he received a draft notice for conscription on 12 October 2009; however, he did not go to Nonsan Army Training Centre, as required. Instead, he notified the Military Manpower Administration Office that he would not join the army because of his Bible-trained conscience. On 29 January 2010, the author was sentenced to 18 months in prison by the Trial Court of Nonsan Branch of Daejeon because he was a conscientious objector to military service. His appeal to the

Court of Appeal was dismissed on 4 May 2010, and his appeal to the Supreme Court was dismissed on 30 September 2010. He was imprisoned on 5 October 2010 with an expected release date of 4 April 2012.

Beom-seok Woo

2.23 The author was baptized on 30 September 2000. On 27 December 2006, he received a draft notice ordering him to enlist in a military training camp by 22 February 2007. Upon receiving the notice, he expressed his will to object to military service to the Military Manpower Administration Office. The author was sentenced to 18 months in prison by the Trial Court of Daegu on 18 February 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 2 May 2008, and his appeal to the Supreme Court was dismissed on 10 July 2008. On 18 February 2008, he was imprisoned and released on parole on 1 May 2009.

Hyun-cheol Yoo

2.24 The author was baptized on 23 September 2001. He rejected the enlistment call for active duty delivered in May 2010 and reported his stance to the Regional Military Manpower Administration one month before the enlistment date. The author was sentenced to 18 months in prison by the Trial Court of Gunsan Branch of Jeonju on 10 November 2010 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 14 January 2011, and his appeal to the Supreme Court was dismissed on 24 March 2011. He has since been in detention.

Kun-suk Lee

2.25 The author was baptized as a Jehovah's Witness on 23 February 2002, when he was 14 years old. In June 2007, he received an enlistment notice to join the army by 24 July. He visited the Military Manpower Administration Office and explained his position that he could not join the army. On 8 January 2008, he was sentenced to 18 months in prison by the Trial Court of Suwon because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 13 March 2008, and his appeal to the Supreme Court was dismissed on 15 May 2008. He was imprisoned in Suwon Detention Centre on 8 January 2008 and was released on parole on 30 March 2009.

Go-woon Lee

2.26 The author has studied the Bible since the age of six and was baptized on 30 March 1996 when he was 10 years old. After having received an enlistment notice for active service ordering him to enter military training on 4 August 2009, he reported to the Military Manpower Administration that he would not enlist. The author was sentenced to 18 months in prison by the Trial Court of Pyeongtaek branch of Suwon on 12 November 2009 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 1 April 2010, and his appeal to the Supreme Court was dismissed on 24 June 2010. He was imprisoned on 30 June 2010 and was released on parole on 30 September 2011.

Ki-woon Lee

2.27 The author was baptized on 10 August 2002. In 2007, he received an enlistment notice and went to the Office of Military Manpower Administration to express his objection to military service. The author was sentenced to 18 months in prison by the Trial Court of Suwon on 27 December 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 20 March 2008, and his appeal to the

Supreme Court was dismissed on 12 June 2008. He served a total sentence of one year and three months.

Min-woo Lee

2.28 The author has received Bible education since he was seven years old and was baptized as a Jehovah's Witness on 8 October 2000. He received an enlistment notice on 8 October 2007 but he did not report for duty. The author was sentenced to 18 months in prison by the Trial Court of Daegu on 15 February 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 18 April 2008, and his appeal to the Supreme Court was dismissed on 9 October 2008. He was detained on 15 February 2008 and was released on parole on 1 May 2009.

Min-hee Lee

2.29 The author was baptized on 29 November 2001. On 5 February 2008, he received an enlistment notice and responded by a written notification of his conscientious objection. The author was sentenced to 18 months in prison by the Trial Court of Euijeongbu on 7 August 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 26 September 2008, and his appeal to the Supreme Court was dismissed on 11 December 2008. He was imprisoned on 26 September 2008 and was released on 30 November 2009 on parole.

Sun Lee

2.30 The author was baptized on 29 July 2000. On 10 November 2009, he received a notice of enlistment; he reported to the Military Manpower Administration and stated that he was a conscientious objector. The author was sentenced to 18 months in prison by the Trial Court of Seoul Central on 5 February 2010 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 15 April 2010, and his appeal to the Supreme Court was dismissed on 27 May 2010. He was imprisoned on 5 February 2010 and released on parole on 9 May 2011.

Sung-hoon Lee

2.31 The author was baptized on 8 December 2001 and decided to refuse to perform military service on the basis of his religious conscience. The author was sentenced to 18 months in prison by the Trial Court of Busan on 4 September 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 21 December 2007, and his appeal to the Supreme Court was dismissed on 12 March 2008. He was imprisoned on 13 March 2008 and was released in May 2009.

Soo-bin Lee

2.32 The author became a Jehovah's Witness by baptism in April 2007. On 8 December 2007, he received a notice of enlistment and subsequently reported his refusal to join the army. He was sentenced to 18 months in prison by the Trial Court of Ulsan on 29 December 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 9 April 2010, and his appeal to the Supreme Court was dismissed on 10 June 2010. On 9 April 2010, he was detained and was later released on parole.

Yung Lee

2.33 The author received an enlistment notice for military service on 4 June 2007, and responded with a letter on 26 June 2007 notifying the authorities of his decision to refuse

service owing to his conscience. The author was sentenced to 18 months in prison by the Trial Court of Cheonan branch of Daejeon on 5 December 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 21 March 2008, and his appeal to the Supreme Court was dismissed on 12 June 2008. On 16 June 2008, he was imprisoned and was released on parole on 14 August 2009.

In-Hong Lee

2.34 The author received a draft notice on 25 August 2008; however, he did not enlist in order to observe Bible teachings as a Jehovah's Witness. He was sentenced to 18 months in prison by the Trial Court of Daegu on 15 April 2009 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 17 July 2009, and his appeal to the Supreme Court was dismissed on 24 September 2009. On 15 April 2009, he was imprisoned and was released on parole on 30 June 2010.

Jong-hyun Lee

2.35 The author was baptized on 22 April 2007. He received an enlistment notice on 30 April 2007, but did not enlist due to his conscience. The author was sentenced to 18 months in prison by the Trial Court of Daejeon on 26 October 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 4 January 2008, and his appeal to the Supreme Court was dismissed on 24 April 2008. On 8 May 2008, he was imprisoned and released on parole after 14 months.

Jee-woon Lee

2.36 The author was baptized on 24 January 1999. In 2006, he received an enlistment notice requiring him to report for duty on 8 May 2007, but he notified the authorities by telephone of his decision to object to military service. The author was sentenced to 18 months in prison by the Trial Court of Uijeongbu on 14 November 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 25 January 2008, and his appeal to the Supreme Court was dismissed on 11 April 2008. On 14 November 2007, the author was imprisoned and released on parole on 30 January 2009.

Tae-sub Lee

2.37 The author was baptized as a Jehovah's Witness on 28 July 2001. He received an enlistment notice on 13 September 2007, and responded with a letter confirming his status as a Jehovah's Witness and explaining the reason for which he could not carry out his military duty. The author was sentenced to 18 months in prison by the Trial Court of Uiseong Branch of Daegu on 16 January 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 4 April 2008, and his appeal to the Supreme Court was dismissed on 12 June 2008. On 16 January 2008, he was imprisoned and was released on 1 May 2009.

Hyun-tek Lee

2.38 The author was baptized on 10 November 2001. On 22 August 2007, he received an enlistment notice. He then explained to the police that he objected to military service. The author was sentenced to 18 months in prison by the Trial Court of Seoul Southern on 16 January 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 13 February 2008, and his appeal to the Supreme Court was dismissed on 12 June 2008. In December 2007, he was imprisoned and was released on parole on 30 March 2009.

Byeng-kyeng Lim

2.39 The author was baptized on 25 May 2003. On 2 February 2008, he received an enlistment notice but declined to enlist in the army owing to his adherence to Bible principles. The author was sentenced to 18 months in prison by the Trial Court of Seoul Bukbu on 10 December 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 10 February 2009, and his appeal to the Supreme Court was dismissed on 23 April 2009. On 10 December 2008, he was imprisoned and was released on 26 February 2010.

Sung-Hoon Lim

2.40 The author was baptized as a Jehovah's Witness on 22 July 2006. In summer 2007, he received an enlistment notice and notified the authorities in writing that he would not enlist. The author was sentenced to 18 months in prison by the Trial Court Central Seoul on 2 February 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 8 May 2008, and his appeal to the Supreme Court was dismissed on 10 July 2008. On 8 May 2008, he was imprisoned and was released on 30 July 2009.

Yoon-soo Lim

2.41 The author was baptized as a Jehovah's Witness in December 2000. He received an enlistment notice in early winter 2007 and notified the authorities of his objection. The author was sentenced to 18 months in prison by the Trial Court Euijeongbu on 25 January 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 22 May 2008, and his appeal to the Supreme Court was dismissed on 13 November 2008. On 22 May 2008, he was imprisoned.

Jun-woo Jeon

2.42 On 14 August 2002, the author became a Jehovah's Witness. He notified the Military Manpower Administration Office of his conscientious objection to military service before he received an enlistment notice on 21 March 2007. The author was sentenced to 18 months in prison by the Trial Court Busan on 14 August 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 11 December 2007, and his appeal to the Supreme Court was dismissed on 28 February 2008. He was imprisoned on 31 March 2008 and was released on parole on 1 May 2009.

Gi-jong Jung

2.43 The author was baptized as a Jehovah's Witness on 16 November 2001. The author received an enlistment notice to report to a military unit by 30 July 2007 and he notified the Military Manpower Administration Office of his conscientious objection to military service. The author was sentenced to 18 months in prison by the Trial Court of Uijeongbu on 18 January 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 22 May 2008, and his appeal to the Supreme Court was dismissed on 24 July 2008. On 22 May 2008, he was imprisoned.

Il-ro Jeong

2.44 The author was baptized as a Jehovah's Witness on 21 March 2004 at the age of 16. After receiving a notice of enlistment for active service on 18 August 2009, he did not enlist. The author was sentenced to 18 months in prison by the Trial Court of Haenam Branch of Gwangju on 24 December 2009 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 6 July 2010, and his

appeal to the Supreme Court was dismissed on 11 November 2010. On 11 November 2010, he was imprisoned and was released on 14 May 2012.

Jong-min Jeong

2.45 The author became a Jehovah's Witness by baptism on 3 December 2006. He received an enlistment notice on 23 May 2007 and, the day before his enlistment, he informed the Military Manpower Administration office of his objection to military service. The author was sentenced to 18 months in prison by the Trial Court of Busan District on 18 October 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 29 April 2008, and his appeal to the Supreme Court was dismissed on 10 July 2008. On 21 July 2008, he was imprisoned and was released on parole on 30 September 2009.

Chul-Ho Jeong

2.46 The author had associated with Jehovah's Witnesses since he was young. He received an enlistment notice in May 2008 but refused to do military service due to his Bible-trained conscience. The author was sentenced to 18 months in prison by the Trial Court of Seoul Central on 17 September 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 30 October 2008, and his appeal to the Supreme Court was dismissed on 27 May 2010. On 11 June 2010, the author was imprisoned and he was released on 12 August 2011.

Seong-chan Jo

2.47 The author was baptized on 23 January 1999. After receiving an enlistment notice from the Military Manpower Administration, he notified of his objection to military service. The author was sentenced to 18 months in prison by the Trial Court of Uijeongbu District on 15 April 2010 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 15 July 2010, and his appeal to the Supreme Court was dismissed on 30 September 2010. On 15 July 2010, he was imprisoned and was released on 30 September 2011.

Sang-young Choi

2.48 The author was baptized on 18 may 2003. In July 2007, he received an enlistment notice and notified the Military Manpower Administration Office of his conscientious objection to military service. The author was sentenced to 18 months in prison by the Trial Court of Busan on 15 February 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 11 April 2008, and his appeal to the Supreme Court was dismissed on 24 July 2008. He was imprisoned for 1 year and 3 months and was released on parole.

Hyoung-jin Choi

2.49 The author was baptized as a Jehovah's Witness on 19 September 1998. In June 2007, he received an enlistment notice to join the army but explained that he would not serve the army because of his religion. The author was sentenced to 18 months in prison by the Trial Court of Suncheon Branch of Gwangju on 21 December 2007 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 15 February 2008, and his appeal to the Supreme Court was dismissed on 24 April 2008. On 21 December 2007, he was imprisoned and was released on parole on 30 March 2009.

Ji-hun Han

2.50 The author was baptized on 31 July 2004. He received a notice of enlistment on 13 August 2009, but did not enlist owing to his objection to military service. The author was sentenced to 18 months in prison by the Trial Court of Goyang on 23 July 2010 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 21 January 2011, and his appeal to the Supreme Court was dismissed on 24 November 2011. On 29 November 2011, he was imprisoned.

Dong-yoon Hyun

2.51 The author was baptized as a Jehovah's Witness on 30 July 1994. He received a draft notice on 15 December 2007, but his request to postpone conscription to wait for the implementation of alternative service was dismissed. The author was sentenced to 18 months in prison by the Trial Court of Busan on 15 July 2008 because he was a conscientious objector to military service. His appeal to the Court of Appeal was dismissed on 28 August 2009, and his appeal to the Supreme Court was dismissed on 26 November 2009. On 3 December 2009, the author was imprisoned and released on parole on 28 February 2011.

The complaint

3.1 The authors assert that the State party's refusal to recognize their right to conscientious objection to military service, under penalty of imprisonment, constitutes a violation of article 18, paragraph 1, of the Covenant. The authors submit that the Committee has clearly found that conscientious objection to military service is a protected right deriving from the freedom of thought, conscience and religion.[3] The authors also emphasize that it is undisputed that each one of them is a conscientious objector to military service, as they have each personally decided that serving in the army would be a serious breach of their Bible-trained conscience as Jehovah's Witnesses.

3.2 The authors also argue that their detention due to their conscientious objection constitutes a violation by the State party of article 9 of the Covenant, which prohibits arbitrary detention and guarantees an enforceable right to compensation. The authors submit that the Working Group on Arbitrary Detention categorizes the deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the Covenant as a form of arbitrary detention, and that the European Court of Human Rights noted the findings of the Working Group in a recent judgment.[4]

3.3 The authors request that their criminal records be expunged and that the State party provide them with adequate compensation and take necessary measures to avoid similar violations of the Covenant in the future.

State party's observations on admissibility and on the merits

4.1 In its observations dated 14 March 2012, the State party expresses deep concern with the shift in jurisprudence of the Committee concerning the issue of conscientious objection, and characterizes as erroneous the recent decisions of the Committee in which it found that the State party had breached article 18 of the Covenant because it had not

[3] See, inter alia, communications No. 1642-1741/2007, *Min-kyu Jeong et al* v. *The Republic of Korea*, Views adopted on 24 March 2011, para. 7.3.

[4] See, inter alia, Working Group on Arbitrary Detention opinions Nos. 36/1999 (Turkey), 24/2003 (Israel), and 16/2008 (Turkey). See also European Court of Human Rights, Grand Chamber, 7 July 2011, *Bayatyan* v. *Armenia* (Application no. 23459/03), para. 65.

recognized conscientious objection.[5] The State party considers that, when the Covenant was negotiated and adopted, participating States had expressed reservations concerning whether conscientious objection fell within the ambit of article 18 of the Covenant. Article 8, paragraph 3 (c) (ii), of the Covenant stipulates that "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors" shall not be included in "forced or compulsory labour". The term "in countries where conscientious objection is recognized" indicates that a State party may decide whether to recognize conscientious objection and an alternative service system.[6]

4.2 The State party considers that it is difficult to accept that the views of the Committee on the issue of conscientious objection under article 18 have been altered. Since the cases of *Min-kyu Jeong et al.*, the Committee has been interpreting conscientious objection as a right that is inherent in the right to freedom of thought, conscience and religion under article 18, paragraph 1, of the Covenant, rather than as a right to freedom to manifest one's beliefs. This new interpretation is erroneous in two respects. First, the Committee claims that conscientious objection is an absolute right that is non-derogable even in exigencies under article 4 of the Covenant. In these circumstances, the claim of conscientious objection could be extended as a justification for acts such as refusal to pay taxes or refusal of mandatory education. Second, the Committee claims that the State party violated the right of individuals to choose whether to declare conscientiously held beliefs. However, if that right were violated by a State party's failure to introduce an alternative service system, then it would follow that the individuals must prove their conscience in order to benefit from alternative service, which would also in turn be regarded as a violation of the right to choose whether to declare conscientiously held beliefs, according to the same logic. Therefore, the views of the Committee are not compatible with the nature of an alternative service system.

4.3 The State party considers that various practical problems arise from the implementation of an alternative service system under a compulsory military service system. The State party first maintains the views it previously explained in its response to the communications submitted to the Committee on 14 November 2008. The State party would be unable to recruit enough military manpower if it acknowledged an exemption from conscription or allowed for alternative service. Since 2008, mainly in the West Sea within the territory of the Republic of Korea, there has been a clash between naval vessels (the naval battle of Daecheong) and 46 people serving in the navy died when the *Cheonan* was attacked and sunk. Since then, the crisis in the Korean peninsula has intensified owing to missile attacks and nuclear tests. Moreover, alternative service would undermine social cohesion, stable pluralism in a religiously diverse society and the public order by

[5] See communications No. 1321-1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi* v. *The Republic of Korea*, Views adopted by the Committee on 3 November 2006; *Min-kyu Jeong et al.* v. *The Republic of Korea* (note 3 above); and 1786/2008, *Jong-nam Kim et al.* v. *The Republic of Korea*, Views adopted on 25 October 2012. The State party considers that the Committee based its reasoning in communication No. 1321-1322/2004 on the following factors: an increasing number of the States parties to the Covenant that have retained compulsory military service have introduced alternatives to such service; the State party had failed to show what special disadvantage would be involved for it if the rights of the authors under article 18 had been fully respected; respect for conscientious beliefs and manifestations thereof on the part of the State was itself an important factor in ensuring cohesion and stable pluralism in society; it was in principle possible and in practice common to conceive alternatives to compulsory military service that did not erode the basis of the principle of universal conscription but rendered equivalent social good and made equivalent demands on the individual; and the State party had not demonstrated that the restrictions in question were necessary.

[6] See Republic of Korea Supreme Court Judgment, 27 December 2007, Decision 2007Do7941.

compromising fairness in military service obligations and creating unfair disparities between those engaged in compulsory military service and alternative service. It is in practice difficult to introduce an alternative service system, owing to conditions such as the current security situation, restrictions on individual freedom due to military service and a lack of consensus among democratic communities.

4.4 The State party further considers that the authors' claims under article 9 of the Covenant are inadmissible owing to a lack of substantiation, because the authors did not demonstrate the direct correlation between their specific circumstances and the State party's alleged violations.

4.5 The State party considers that, if the Committee considers the communication to be admissible, the authors' claims may be reasonably rejected on the merits. Paragraph 3 and parts of paragraph 2 of article 9 of the Covenant may only be applied to criminal proceedings.[7] The authors were not arbitrarily detained but were rather detained according to independent and fair court judgments that apply legal boundaries that limit basic rights for the protection of national security. None of the authors claimed that the trial procedures were unfair, and most of the authors were investigated without detention according to the procedures, including the judge's examination of the warrant request, as stipulated in the Criminal Procedure Act. Where a counsel was not appointed by the author himself, a defence counsel was assigned, legal assistance was provided and fair trials were carried out in accordance with articles 9 and 14 of the Covenant. Moreover, pursuant to the Military Service Act, the State party does not consider conscientious objection to derive directly from article 18 of the Covenant.[8] Because the law that provides the grounds for the authors' detention owing to their objection to military service had not been arbitrarily interpreted or applied, the grounds for deprivation of liberty was also legitimate and lawful. In addition, all authors had been sentenced to imprisonment for a term of 18 months, on the basis of the courts' standard for the minimum sentence necessary for the authors to avoid re-enlistment. Only persons who have been sentenced to imprisonment with prison labour or imprisonment without prison labour for at least eighteen months are subject to exemption from military service.[9] Thus, if the authors had been sentenced to imprisonment for less than one year and six months, or to a suspension of execution, there was a high probability that they would have refused enlistment or call-up and would have therefore been sentenced to imprisonment again. The judiciary took this into account when sentencing them to imprisonment; as such, their detention had not been arbitrary.

4.6 Finally, the State party notes that it has been making continuous efforts to consider conscientious objection and the introduction of alternative service systems in order to protect and ensure the right to religion and conscience to the fullest extent possible and in order to respect the views of the Committee. The State party announced its plan, in September 2007, to introduce a system of assigning social services to those who refuse conscription owing to religious belief, on condition that there is a public consensus and there is no shift in this position. Thus, once such consensus is determined by way of research on public opinion and on the positions of relevant Ministries and institutions, the State party will consider the introduction of an alternative service system. In particular, the

[7] See general comment No. 8 (1982) on the right to liberty and security of persons.

[8] See article 88, paragraph 1, of the Military Service Act, which states: "Any person who has received a notice of enlistment for active duty service or a notice of call (including a notice of enlistment through recruitment) and fails to enlist in the military or to comply with the call, even after the expiration of the following report period from the date of enlistment or call, without justifiable grounds, shall be punished by imprisonment for not more than three years."

[9] See article 136, paragraph 1, subparagraph 2(a) of the Enforcement Decree of the Military Service Act.

Second National Action Plan for the Promotion and Protection of Human Rights, implemented in 2012, contains a plan to consider the introduction of alternative service. However, the State party requests that the Committee understand the fact that, until there is public consensus and an improved security situation, the current system of military service must be maintained.

Author's comments on the State party's observations

5.1 In their comments dated 29 July 2013, the authors challenge the State party's observations. Regarding the admissibility of their claims under article 9 of the Covenant, the authors assert that, because it is undisputed that each author was detained, the claims should be examined on the merits.

5.2 Concerning article 18 of the Covenant, the authors assert that the Covenant should be viewed as a living instrument that must be interpreted in the light of present-day conditions and the ideas prevailing in democratic States today. The authors maintain that this interpretation is in line with the Committee's views in communications No. 1321-1322/2004.[10] The authors further maintain that, because article 8 of the Covenant neither recognizes nor excludes a right of conscientious objection, the assessment of that right must be made solely in the light of article 18 of the Covenant.[11] Moreover, the authors submit that the claim of conscientious objection to military service must be made on the basis of an objection to the obligation to use lethal force.[12] With regard to the State party's observation that the rights of a conscientious objector might be infringed during the process of applying for conscientious objection status, the authors assert that this infringement can be avoided by the establishment of a fair and effective decision-making process for applicants. In that regard, the Committee has previously recommended to "consider placing the assessment of applications for conscientious objector status under the control of civilian authorities".[13]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As required by article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5, paragraph 2 (b), of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[14] The Committee notes that the 50

[10] See *Yeo-Bum Yoon and Myung-Jin Choi* v. *The Republic of Korea* (note 5 above), para. 8.2.

[11] See European Court of Human Rights, Grand Chamber, 7 July 2011, *Bayatyan* v. *Armenia* (Application no. 23459/03), para. 100.

[12] See general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, paragraph 11. See also communication No. 682/1996, *Westerman* v. *The Netherlands*, decision on admissibility of 16 October 1997.

[13] Concluding observations on the initial report of Greece, CCPR/CO/83/GRC, para. 15.

[14] See communications No. 1003/2001, *P.L.* v. *Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5; and No. 433/1990, *A.P.A.* v. *Spain*, decision of inadmissibility adopted on 25 March 1994, para. 6.2.

authors have all unsuccessfully appealed their convictions for draft evasion to the Supreme Court of the State party. Taking these decisions into account, and in the absence of any objection by the State party, the Committee considers that it is not precluded from examining the communication by article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee takes note of the State party's position that the communication is inadmissible under article 2 of the Optional Protocol, owing to a lack of substantiation, because the authors did not demonstrate a direct correlation between their specific circumstances and the State party's alleged violations. The Committee also notes the authors' argument that the communication is admissible because it is undisputed that each author was detained. The Committee considers that the communication raises issues under articles 9 and 18 of the Covenant because it is undisputed that the authors were detained owing to their conscientious objection to military service and because the authors allege that this detention was arbitrary as an infringement upon their right to freedom of conscience. The Committee therefore considers that the authors have sufficiently substantiated their allegations and declares the claims admissible and proceeds to their consideration on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that their rights under article 18, paragraph 1 of the Covenant have been violated, owing to the absence in the State party of an alternative to compulsory military service, as a result of which their failure to perform military service on account of their religious conscience led to their criminal prosecution and imprisonment. The Committee notes that, in the present cases, the State party reiterates arguments advanced in response to the earlier communications before the Committee,[15] notably on the issues of national security, equality between military and alternative service, and lack of a national consensus on the matter. The Committee considers that it has already examined these arguments in its earlier Views[16] and finds no reason to depart from its earlier position.[17]

7.3 The Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it considers that the fundamental character of the freedoms enshrined in article 18, paragraph 1, of the Covenant is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4, paragraph 2, of the Covenant. The Committee recalls its prior jurisprudence that, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of conscience.[18] The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such

[15] See *Yeo-Bum Yoon and Myung-Jin Choi* v. *the Republic of Korea* (note 5 above), paras. 4.1-4.6; *Jong-nam Kim et al.* v. *Republic of Korea* (note 5 above), paras. 4.1-4.8; and No. 1593-1603/2007, *Eu-min Jung et al* v. *the Republic of Korea*, Views adopted by the Committee on 23 March 2010, paras. 4.3-4.10.

[16] See *Yeo-Bum Yoon and Myung-Jin Choi* v. *the Republic of Korea* (note 5 above), para. 8.4.

[17] See *Min-kyu Jeong et al* v. *The Republic of Korea* (note 3 above), para. 7.2.

[18] See *Yeo-Bum Yoon and Myung-Jin Choi* v. *the Republic of Korea* (note 5 above), para. 8.3; and *Jong-nam Kim et al.* v. *Republic of Korea* (note 5 above), para. 7.3.

service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.[19] The Committee notes that the State party disagrees with this position on the grounds that the claim of conscientious objection could be extended in order to justify acts such as refusal to pay taxes or refusal of mandatory education. However, the Committee considers that military service, unlike schooling and payment of taxes, implicates individuals in a self-evident level of complicity with a risk of depriving others of life.[20]

7.4 In the present cases, the Committee considers that the authors' refusal to be drafted for compulsory military service derives from their religious beliefs, which, it is uncontested, were genuinely held, and that the authors' subsequent convictions and sentences amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1 of the Covenant. Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1 of the Covenant.[21]

7.5 The Committee notes the authors' claim that imprisoning them as punishment for refusing military service amounts to arbitrary detention under article 9 of the Covenant.[22] The Committee observes that article 9, paragraph 1, of the Covenant provides that no one may be subjected to arbitrary arrest or detention. The Committee recalls that the notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[23] Just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary,[24] so is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant. Consequently, the Committee also finds that article 9, paragraph 1, of the Covenant has been violated with respect to each author.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts before the Committee reveal, with respect to each of the 50 authors, violations by the Republic of Korea of articles 9, paragraph 1; and 18, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.

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[19] See *Min-kyu Jeong et al* v. *The Republic of Korea* (note 3 above), para. 7.3; and *Jong-nam Kim et al.* v. *Republic of Korea* (note 5 above), para. 7.4.

[20] See communication No. 1853-1854/2008, *Cenk Atasoy and Arda Sarkut* v. *Turkey*, Views adopted on 29 March 2012, Appendix, Section II.

[21] See *Min-kyu Jeong et al* v. *The Republic of Korea* (note 3 above), para. 7.4; and *Jong-nam Kim et al.* v. *Republic of Korea*, para. 7.5 (note 5 above).

[22] See Working Group on Arbitrary Detention opinion No. 16/2008 (Turkey), 9 May 2008.

[23] See, inter alia, communications No. 1134/2002, *Gorji-Dinka* v. *Cameroon*, Views adopted on 17 march 2005, para. 5.1; and No. 305/1988, *Van Alphen* v. *The Netherlands*, Views adopted on 23 July 1990, para. 5.8.

[24] See communication No. 328/1988, *Zelaya Blanco* v. *Nicaragua*, Views adopted on 20 July 1994, para. 10.3.

10. By becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. Pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy where it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and ensure that they are widely disseminated.

Appendix I

[Original: English]

Joint opinion of Committee members Yuji Iwasawa, Gerald L. Neuman, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili (concurring)

1. We concur with the Committee's conclusion that the State party has violated the rights of the authors under articles 9 and 18 of the Covenant, but for somewhat different reasons than those given by the majority. We believe that the majority should have adhered to the approach it employed in its Views on similar issues in 2006 and 2010, which analysed the authors' rights to conscientious objection to military service as an instance of manifestation of belief in practice, which is subject to limitation under paragraph 3 of article 18.[a] Instead, in 2011, the majority of the Committee shifted its approach and treated the right to conscientious objection to military service as part of the absolutely protected right to hold a belief.[b] Despite the objections of separate opinions,[c] the Committee has employed this absolute approach in recent cases, including in paragraphs 7.3 and 7.4 of the present Views. We do not consider the majority's explanations for the change of analysis persuasive.

2. We do, however, conclude that the Republic of Korea has not provided a sufficient justification for denying the right of conscientious objection, as the Committee had found in prior cases applying its earlier approach to the situation in this State party.

[a] See communications No. 1321-1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi* v. *The Republic of Korea*, Views adopted by the Committee on 3 November 2006; and No. 1593-1603/2007, *Eu-min Jung et al* v. *the Republic of Korea*, Views adopted by the Committee on 23 March 2010.

[b] See Communication Nos. 1642-1741/2007, *Jeong et al.* v. *the Republic of Korea*, Views adopted on 24 March 2011.

[c] See communications No. 1853-1854/2008, *Atasoy and Sarkut* v. *Turkey*, Views adopted on 29 March 2012 (individual opinion of Committee member Gerald L. Neuman, jointly with members Yuji Iwasawa, Michael O'Flaherty and Walter Kälin (concurring)); communication No. 1786/2008, *Kim et al.* v. *the Republic of Korea*, Views adopted on 25 October 2012 (individual opinions of Committee member Walter Kälin (concurring) and Committee members Gerald L. Neuman and Yuji Iwasawa (concurring)).

Appendix II

[Original: Spanish]

Individual opinion of Committee member Fabián Salvioli (concurring)

1. I concur with the decision of the Human Rights Committee and the grounds on which it was based in *Kim et al.* v. *Republic of Korea* (communication No. 2179/2012). The Views of the Human Rights Committee in the present case reaffirm the jurisprudence that has been established since 2011 in *Jeong et al.* v. *Republic of Korea* (communication No. 1642-1741/2007) and later in *Atasoy and Sarkut* v. *Turkey* (communication No. 1853-1854/2008) and in *Jong-nam Kim et al.* v. *Republic of Korea* (communication No. 1786/2008), both of which were resolved in 2012.

2. The Committee's current practice is to regard the right to conscientious objection to compulsory military service as being protected under article 18, paragraph 1, of the Covenant, which means, in turn, that a State party may not suspend that right under any circumstance (article 4 of the Covenant). It also means that, unlike what would have been the case under the Committee's jurisprudence prior to 2011, a State party may not limit the right to conscientious objection to compulsory military service for reasons of safety or on any other grounds (this would have been possible if conscientious objection to compulsory military service were to be regarded as being covered by article 18, paragraph 3, as the Committee had in the past.)

3. The Committee has laid an appropriate foundation for its present position on the issue by taking into account the progressive developments in international human rights law, which should guide the work of bodies entrusted with the task of interpreting and applying human rights instruments.[a]

4. I am not going to reiterate the many reasons why I support the current position of the Committee. I instead refer to my individual opinions regarding *Atasoy and Sarkut* v. *Turkey* and *Jong-nam Kim et al.* v. *Republic of Korea*, in which I discussed how the right of conscientious objection has evolved within the framework of international human rights law and, in particular, within the context of the work of various United Nations bodies. In those opinions I also weighed the legal advantages that the new approach affords for conscientious objectors in States parties to the International Covenant on Civil and Political Rights.[b, c]

5. It would be regrettable and would run counter to the way in which the protection of human rights has evolved if the Committee were to revert to its pre-2011 jurisprudence in this matter. If it were to do so, then States would be in a position to find reasons to oblige

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[a] See communications No. 1642-1741/2007, *Min-kyu Jeong et al* v. *The Republic of Korea*, Views adopted on 24 March 2011, para. 7.3; No. 1853-1854/2008, *Cenk Atasoy and Arda Sarkut* v. *Turkey*, Views adopted on 29 March 2012, para. 10.4; and No. 1786/2008, *Kim et al.* v. *the Republic of Korea*, Views adopted on 25 October 2012, para. 7.4.

[b] See the individual opinion of Committee member Fabián Salvioli (concurring) regarding *Cenk Atasoy and Arda Sarkut* v. *Turkey* (note a above), paras. 1–19.

[c] See the individual opinion of Committee member Fabián Salvioli (concurring) regarding communication No. 1786/2008, *Jong-nam Kim et al.* v. *The Republic of Korea*, Views adopted on 25 October 2012, paras. 1–11.

people to take up arms despite their convictions and even to participate in an armed conflict in which they might be forced to take another person's life.

6. International human rights bodies should at all times work to expand the scope of international protection; it would be illogical for the Committee to ask States parties to refrain from rolling back any of the human rights guarantees that they provide while at the same time embracing legal interpretations that reduce the scope of the standards that the Committee itself has established.

7. I trust that the Committee will continue along its well-chosen legal path with respect to conscientious objection to compulsory military service and that, if it adopts a new approach in this or another matter, that approach will be one that will expand the scope of human rights rather than providing States parties with excuses for infringing the fundamental rights of persons within their jurisdiction.